IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4718 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL ALKESHKUMAR MANILAL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
NANAVATI ASSOCIATES for Petitioner(s) : 1,1.2.1
MS FALGUNI PATEL, AGP for Respondent-State and its functionaries.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 22/09/2006

ORAL JUDGMENT

In this petition, under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the inaction on the part of the respondents more particularly respondents Nos.3 and 4, i.e. District Registrar, Mehsana and Liquidation

Officer, Liquidator of Shri Bhandu Group Cooperative Cotton Sale, Ginning Pressing Society Ltd., Mehsana in not executing the registered document of sale and not putting the petitioner in possession of the property admeasuring 12 Acres and 29 Gunthas together with wire fencing, buildings of ginning and pressing such as press room, factory room, godown, quarters, office building etc. (hereinafter referred to as the “said property”). The petitioner is the highest bidder and his bid has been accepted and full payment thereof has been made. The petitioner has further challenged the inaction on the part of the respondents in not parting with possession of the said property on the sufficient grounds raised in the petition, particularly with regard to power and jurisdiction under the provisions of the Gujarat Cooperative Societies Act, 1963 (hereinafter referred to as 'the Act'). The petitioner has also challenged the order dated 1.1.2004 of respondent No.3 on several grounds.

2. The petitioner has further challenged the order dated 25.11.2003 passed under Sec.107 of the Act and the Society was taken into liquidation and respondent No.4 was appointed as Liquidator under Sec.108 of the said Act. It has been further stated that respondent No.4 issued tender notice offering to the members of the public the said property for sale. The auction was to be held on 17.5.1990 and the petitioner participated in the auction proceedings. The petitioner was the highest offerer who offered

Rs.10,98,000/- which was accepted by the Liquidator on 4.6.1990. In view of the order of respondent No.3, the petitioner was called upon to complete the further formalities. The petitioner, requested the Liquidation Officer that he was ready and willing to make balance payment and called upon him to immediately execute the registered document of sale in favour of the petitioner. It has further been mentioned that the period for executing the registered document of sale was extended under the order of Liquidator dated 3rd July 1990.

3. It has been further stated by the petitioner that one of the Chowkidars of the said society had filed certain proceedings and because of the same, the petitioner could not obtain possession of the same. Thereafter, the Liquidation Officer by letter dated 20.10.2003 called upon the petitioner to make the balance payment of Rs.9,98,000/- on or before 6.11.2003, failing which the earnest money of Rs.1.00 lac deposited by the petitioner would be forfeited. Thereafter, the petitioner has paid Rs.9,98,000/- by demand draft dated 3.11.2003. In spite of the above, the Liquidation Officer did not execute the sale deed and had not given possession of the property in question to the petitioner.

4. Thereafter, the District Registrar, i.e. Respondent No.3 informed the petitioner against the letter dated 20.10.2003 of the Liquidation Officer of Unjha Spices Processing & Marketing Cooperative

Society Ltd., Market Yard, Unjha had filed an appeal before the Additional Registrar, being Revision Application No. 73 of 2003 and since the matter is subjudice, no action could be taken in the matter. Further, some litigations were initiated by son of Chowkidar which had come to an end and there was no interim order existing in that behalf. In view of that, the present petitioner had filed the petition challenging the inaction of the District Registrar in not executing the sale deed and in not giving possession, some where on 12th April 2004.

5. Mr.Prabhav Mehta, learned Advocate for the petitioner states that against the order dated 1.1.2004 of the District Registrar, Unjha Spices Processing & Marketing Co.Op.Society Ltd. has also filed Special Civil Application No. 7080 of 2004 against the inaction. I have been informed that the parties are trying for settlement in the matter in connection with the property in question. Mr.Tushar Mehta, learned Advocate states that the Society is likely to withdraw the petition filed against the said order. He also states that the respondent petitioner of Special Civil Application No. 4718 of 2004 is also likely to withdraw the petition in this behalf. In view of the same, nothing remains in this matter. Therefore, Mr.Prabhav Mehta, learned Advocate states that this matter can be disposed of at this stage. Therefore, the petition stands disposed of as withdrawn. Interim relief stands vacated. Rule is discharged. No order as to costs.

(K.M.Mehta, J.)

Sreeram.